IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE A.K.BASHEER

TUESDAY, THE 7TH MARCH 2006 / 16TH PHALGUNA, 1927

Crl.MC.No. 784 of 2005()

ST.1189/2004 of CHIEF JUDICIAL MAGISTRATE COURT, PATHANAMTHITTA

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PETITIONER:

HARIHARA PUTHRA SHARMA,
(FORMER D.F.O) RESIDING AT PRASANTH
ANANDAPPALLY, P.O.ADOOR, ADOOR TALUK,
(THONATTUMADOM, ANANDAPPALLY P.O., ADOOR).

BY ADV. SRI.JOHNSON GOMAZ

RESPONDENTS:

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1. THE STATE OF KERALA, REPRESENTED
BY THE PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM.

2. S.UNNIKRISHNAN,
AMBADI, KANNAMOODU, ADOOR P.O.

R1 BY P.P. SHRI C.P. SAJI
R2 BY ADV. SRI.V.PHILIP MATHEW

THIS CRIMINAL MISC. CASE HAVING BEEN FINALLY HEARD ON 24/8/2005, THE COURT ON 7.3.2006 PASSED THE FOLLOWING:

A. K. Basheer, J.

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Crl.M.C.No.784 of 2005

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Dated this the 7th day of March, 2006.

O R D E R

An interesting question touching upon the territorial jurisdiction of a criminal court to entertain a complaint under the Negotiable Instruments Act, has come up for consideration in this petition filed under Section 482 of the Code of Criminal Procedure.

2. The question is: Does a criminal court get jurisdiction to entertain a complaint under Section 142 of the Negotiable Instruments Act for the sole reason that the statutory notice demanding payment had been issued by the Advocate of the complainant who has his office within the territorial limits of that court?

3. Relevant facts may be briefly noticed.

4. The petitioner is being prosecuted for an offence punishable under Section 138 of the Negotiable Instruments Act before the Chief Judicial Magistrate's Court, Pathanamthitta. In Annexure A complaint filed by respondent No.2/complainant, it is averred that the cheque for a sum of Rs.98,000/- issued by the petitioner/accused was dishonoured when it was presented for collection. Though a statutory notice was issued on behalf of the complainant, intimating dishonour and demanding payment, the accused had failed to discharge the liability. In the nature of the short question that has cropped up for consideration in this case, it is not necessary to deal with the various contentions raised by the

accused as regards the transaction between him and the complainant and also the liability of the accused to discharge the alleged debt.

5. The primary contention raised by the petitioner/accused is that the court of the Chief Judicial Magistrate at Pathanamthitta before which Annexure A complaint is pending now, has got no territorial jurisdiction to entertain the same. The case of the petitioner is that the cheque having been issued, presented and dishonoured within the limits of the Judicial Magistrate of First Class at Adoor, the complainant was not entitled to file the complaint before the court at Pathanamthitta on the sole ground that the demand for payment was made by his counsel from his office at Pathanamthitta. Learned counsel submits that if the complainant is allowed to choose the forum, it will result in disastrous consequences. An unscrupulous complainant will use it as a handle to harass the drawer of a cheque and drag him to any criminal court of his choice.

6. Is the above contention legally tenable, particularly in view of the decision of their Lordships of the Supreme Court in **K. Bhaskaran v. Sankaran Vaidhyan Balan** (2000 (2) KLJ 58)?

7. It is the admitted position that the complainant and the accused are residents of Adoor Taluk. The address of the complainant in the cause title of Annexure A complaint and in the petition filed before this court shows that he is residing within the limits of Adoor Post Office. Similarly, the address of the petitioner/accused shows that he is a resident within the limits of Ananthappally Post Office in Adoor. It is also revealed from the complaint that the accused had drawn the cheque in question on the Adoor Branch of State Bank of Travancore

and that it was presented by the complainant for encashment through his account in Adoor Co-operative Bank at Adoor. Obviously, the complaint was filed before the court at Pathanamthitta solely for the reason that the demand notice was issued from Pathanamthitta.

8. Paragraph 9 of Annexure A complaint is extracted hereunder:

> " As for the territorial jurisdiction, it is submitted that the notice demanding the cheque amount having been made at Pathanamthitta on 29.7.2004 within the jurisdiction of this honourable court." (emphasis supplied)

Learned counsel for the complainant conceded that but for the above reason, Annexure A complaint ought to have been filed before the Court of the Judicial Magistrate of First Class at Adoor. Annexure B is stated to be the true copy of the statutory demand notice issued by the Advocate of the complainant from his office at Pathanamthitta.

9. Learned counsel for the complainant submits that there is nothing incongruous or illegal in the complainant making a demand for payment of the amount covered under the cheque through a counsel of his choice. If the drawer of the cheque fails to make payment in spite of the demand notice, he is liable to be prosecuted as provided under the Act before any court having jurisdiction to try the offence. It is further contended by the learned counsel that a complainant will be entitled to file the complaint at any one of the places where any part of the cause of action had arisen. It can be at the place where the cheque was issued or at the place where the cheque was presented. The complaint can also be filed

before the court within whose territorial jurisdiction the cheque was returned unpaid by the bank. Similarly, the complainant is entitled to initiate prosecution before a court within the territorial jurisdiction of which a demand for payment was made by him. In this context learned counsel has placed heavy reliance on the decision of the Apex Court in Bhaskaran's case (supra).

10. The Negotiable Instruments Act, 1881 was amended in the year 1988 incorporating Chapter XVII therein, making dishonour of cheque a penal offence. The said amendment was found necessary by the Parliament since it was felt that efficacy and credibility of banking transactions through negotiable instrument like cheque, had eroded alarmingly. Later, the Act was further amended in the year 2002, incorporating Sections 143 to 147 in Chapter XVII.

11. Reference has been made to the first amendment in the year 1988 and to those which followed thereafter, only to notice the anxiety of the legislature to give more acceptability and credibility to banking transactions using negotiable instruments. It is true that the provisions contained in Chapter XVII of the Act enable the drawee or holder of a cheque to prosecute its drawer if the cheque is dishonoured. The above provisions undoubtedly envisage a speedy and easy procedural mechanism through criminal courts. Legislature probably thought that threat of criminal prosecution may prompt the drawer of the cheque to pay off the debt or liability. Viewed from that perspective, the penal provisions in Chapter XVII may act as a deterrent, since facing trial in a criminal court is not a happy or viable proposition at all for the drawer of a cheque in the event of its dishonour. It is true that prosecuting a case before a criminal court is not an easy task for the

complainant also. But still, the position of the accused is always more vulnerable in a prosecution under Section 138 of the Act.

12. Undoubtedly, introduction of Chapter XVII in the Act has brought in a laudable and welcome change as far as efficacy of banking transactions is concerned. But at the same time, the havoc that can be created by unscrupulous money lenders and other elements who may try to misuse the penal provisions to harass innocent and gullible persons who happen to issue cheques in the course of honest and bonafide transactions has also to be borne in mind. If unbridled discretion is given to the complainants to choose the forum of litigation, it may create judicial havoc, to say the least.

13. As mentioned earlier, instances galore where unscrupulous money lenders have misused the blank cheques extracted by them from their borrowers by inserting inflated amounts, claiming unconscionable and unbelievable rates of interest. If the drawee of a cheque who is bent upon harassing his borrower is permitted to select the forum of his choice, a situation may arise where a complainant living in Trivandrum, at the southern end of the State will choose to file a complaint before the court at Kasaragod situated at the northern extremity, after issuing a demand notice through a counsel at Kasaragod, though the entire transaction between the complainant and the accused had taken place at Trivandrum. It may be true that the complainant may also have to appear before the court at Kasaragod in that eventuality. But in a case where the complainant is aware that the accused may not be in a position to undertake such frequent journeys from the southern most part of the State to the northern end, it may not

be improbable that such an ingenious method would not be adopted by a complainant. The above instance may be hypothetical, but it may not be entirely improbable or impossible at all.

14. The factual situation which is available in the case on hand has to be considered in the backdrop of the probabilities or possibilities indicated above at least for the purpose to ensure that the tendency to misuse the penal provisions under the Act is curbed to the extent possible.

15. It may be true that a hard and fast rule cannot be laid down as regards territorial jurisdiction in the matter of a proceeding under Section 138 of the Negotiable Instruments Act. When a complaint is filed, the trial court has to necessarily consider whether the transaction had taken place within its territorial jurisdiction. The act of taking cognizance of an offence or taking a complaint on file and issuing process to the accused should not be reduced to a mundane or cursory formality. A careful perusal or scrutiny of the averments in the complaint and the documents produced along with it, is absolutely essential and mandatory. Of course, it may not always be possible to take a closer look at the entire materials on record at the initial stage when the complaint is presented before the court. But still, in certain cases like the one on hand, it may not be difficult to find out the jurisdictional flaw or incompetence.

16. It is true that in Bhaskaran's case (supra), their Lordships of the Supreme Court had held that “the offence under Section 138 of the Act can be completed only with the concatenation” of the following acts:

(1) Drawing of the cheque.

(2) Presentation of the cheque to the Bank.

(3) Returning the cheque unpaid by the drawee bank.

(4) Giving notice in writing to the drawer of the cheque demanding payment of the cheque amount.

(5) Failure of the drawer to make payment within 15 days of their receipt of the notice.

The court observed that it is not necessary that all the five acts should have been perpetrated at the same locality. While noticing the possibility that each of the five acts mentioned above could be done at five different localities, the court held that "any one of the courts exercising jurisdiction in one of the five local areas can become the place of trial for the offence under Section 138 of the Act." The court went on to hold further that "the complainant can choose any one of those courts having jurisdiction over any one of the local areas within the territorial limits of which any one of those five acts was done."

17. Learned counsel for the complainant has laid heavy emphasis on the above observation made by the Apex Court, in support of his case. But in the above decision, the factual situation was totally different from the one available in the case on hand. In that case, the trial court had held that it had no territorial jurisdiction to try the case since the cheque was dishonoured by the Branch Office of the Bank situated in a different district. But all other acts like drawing of the cheque, its presentation for encashment, its return after dishonour, and issuance of demand notice etc. had taken place within the territorial limits of the trial court at Adoor. The cheque was presented before the branch of the Syndicate

Bank at Kayamkulam and it was returned due to insufficiency of funds in the account of the accused. Apart from the above sole act of presentation of the cheque before a branch outside the jurisdiction of the trial court, all other acts as noticed by the Supreme Court had, occurred within the territorial limits of the trial court itself. Their Lordships had, in the above facts and circumstances of the case, held that the trial court was not justified in refusing to exercise jurisdiction and deal with the case in accordance with law.

18. In this context, it is also pertinent to note that while dealing with the provisions contained in Section 177 of the Code of Criminal Procedure in deciding the territorial jurisdiction of a criminal court to try an offence, the Supreme Court had observed that there may be "difficulty to fix up any particular locality as the place of occurrence for the offence under Section 138 of the Act". The court observed that "the locality where the Bank (which dishonoured the cheque) is situated cannot be regarded as the sole criteria to determine the place of offence." It is further held thus:

> "It must be remembered that offence under Section 138 would not be completed with the dishonour of the cheque. It attains completion only with the failure of the drawer of the cheque to pay the cheque amount within the expiry of 15 days mentioned in clause © of the proviso to Section 138 of the Act. It is normally difficult to fix up a particular locality as the place of failure to pay the amount covered by the cheque. A place, for that purpose, would depend upon a variety of factors. It can either be at the place where the drawer resides or at the

place where the payee resides or at the place where either of them carries on business....." (emphasis supplied)

19. I have referred to the above observations of the Apex Court to emphasis the fact that any one of the 5 conditions enumerated by their Lordships in Bhaskaran's case may not by itself invariably clinch the issue while deciding the question of jurisdiction. That question has to be decided keeping in view the entire sequence of events starting from issuance of the cheque in the ultimate culmination of refusal to pay.

20. Undoubtedly, Sections 177 to 182 in Chapter XIII of the Code of Criminal Procedure cannot be overlooked. The concomitant components of the offence punishable under Section 138 of the Act being such, it has to be borne in mind that one of the several acts leading to the commission of the offence will not take away the jurisdiction of the court within the territory of which the majority of the acts had been perpetrated. Section 178(d) of the Code has to be read in the backdrop of the peculiar nature of the offence punishable under Section 138. The observations of their Lordships in Bhaskaran's case extracted supra have to be read and understood in that context. In that view of the matter, the respondent-complainant in this case may not be able to draw any support from the above decision of the Apex Court.

21. Having regard to the entire facts and circumstances of the case on hand, I am satisfied that the complainant is not entitled to institute the complaint before the court at Pathanamthitta. Since the major part of the transaction like issuance of the cheque, its presentation and dishonour, having taken place at

Adoor, it may not be just or proper to allow the complainant to prosecute the petitioner/accused before the Chief Judicial Magistrate's Court at Pathanamthitta solely for the reason that the complainant had engaged a counsel at Pathanamthitta to issue the statutory demand notice. In my view, the method adopted by the complainant is clearly intended to harass the petitioner. This cannot be permitted.

22. Therefore, the court below is directed to return the complaint to the respondent/complainant for its presentation before the proper court. If the complainant presents Annexure A complaint before the appropriate court, it shall be taken on file and dealt with in accordance with law.

The Crl. Miscellaneous Case is allowed to the above extent. It is made clear that I have not considered the merit of any of the other contentions raised by the parties.

(A.K. Basheer)
Judge.

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